

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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RONALD TAYLOR, *et al*,

Plaintiffs,

v.

ARIA RESORT & CASINO, LLC, *et al.*,

Defendants.

Case No. 2:11-cv-01360-APG-CWH

**ORDER GRANTING DEFENDANT ARIA  
RESORT & CASINO, LLC'S MOTION  
FOR SUMMARY JUDGMENT AS TO  
PLAINTIFF AUBREY HILL**

**[Dkt. 144]**

Plaintiff Aubrey Hill claims to have contracted Legionnaire's disease during her stay at the Aria Resort and Casino in Las Vegas, Nevada. However, as demonstrated in Aria's Motion for Summary Judgment, Hill's treating physician testified that he did not believe that she contracted Legionnaires' disease. (Dkt. 144-2 at 6, 10, 11.) Likewise, Aria's medical expert, Victor L. Yu, M.D., opined to a reasonable degree of medical certainty that Hill did not contract any form of Legionellosis, whether it be Legionnaires' disease or Pontiac Fever. (Dkt. 144-3 at 1.) Hill has failed to provide any diagnostic testing results or medical expert opinions to contradict the conclusions of her own treating physician and the opinion of Dr. Yu. Furthermore, Hill has failed to designate any expert in this action, including any medical expert to opine that she contracted an illness as a result of her stay at Aria.

The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court." *Northwest Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). In considering a motion for summary judgment, all reasonable inferences are drawn in favor of the non-moving party. *In re Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

1 On the other hand, where reasonable minds could differ on the material facts at issue, summary  
 2 judgment is not appropriate. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

3 A party asserting that a fact cannot be or is genuinely disputed must support the  
 4 assertion by:

5 (A) citing to particular parts of materials in the record, including  
 6 depositions, documents, electronically stored information, affidavits  
 7 or declarations, stipulations (including those made for purposes of the  
 8 motion only), admissions, interrogatory answers, or other materials;  
 9 or

10 (B) showing that the materials cited do not establish the absence or  
 11 presence of a genuine dispute, or that an adverse party cannot produce  
 12 admissible evidence to support the fact.

13 Fed. R. Civ. P. 56(c)(1)(A), (B).

14 In deciding a motion for summary judgment, the court applies a burden-shifting analysis.  
 15 "When the party moving for summary judgment would bear the burden of proof at trial, 'it must  
 16 come forward with evidence which would entitle it to a directed verdict if the evidence went  
 17 uncontroverted at trial.'... In such a case, the moving party has the initial burden of establishing  
 18 the absence of a genuine [dispute] of fact on each issue material to its case." *C.A.R. Transp.*  
 19 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal citations  
 20 omitted). In contrast, when the nonmoving party bears the burden of proving the claim or  
 21 defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate  
 22 an essential element of the nonmoving party's case; or (2) by demonstrating the nonmoving party  
 23 failed to make a showing sufficient to establish an element essential to that party's case on which  
 24 that party will bear the burden of proof at trial. *See Celotex Corp. v. Cartrett*, 477 U.S. 317, 323-  
 25 325 (1986).

26 If the moving party satisfies its initial burden, the burden shifts to the opposing party to  
 27 establish that a genuine dispute exists as to a material fact. *See Matsushita Elec. Indus. Co. v.*  
 28 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a genuine dispute of  
 material fact, the opposing party need not establish a genuine dispute of material fact conclusively  
 in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to

1 resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec.*  
2 *Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (quotation marks and citation omitted). The  
3 nonmoving party must go beyond the assertions and allegations of the pleadings and set forth  
4 specific facts by producing competent evidence that shows a genuine dispute of material fact for  
5 trial. *Celotex*, 477 U.S. at 324.

6 If a party fails to properly support an assertion of fact or fails to properly address  
7 another party's assertion of fact as required by Rule 56(c), the court may: (1) give  
8 an opportunity to properly support or address the fact; (2) consider the fact  
9 undisputed for purposes of the motion; (3) grant summary judgment if the motion  
and supporting materials—including the facts considered undisputed—show that  
the movant is entitled to it; or (4) issue any other appropriate order.

10 Fed. R. Civ. P. 56(e).

11 Here, Hill has not opposed Aria's motion for summary judgment. She has offered no fact  
12 or medical opinion to support her allegation that she contracted Legionnaires' disease or Pontiac  
13 Fever (or any other injury or illness) while staying at Aria. "[M]edical expert testimony  
14 regarding standard of care and causation must be stated to a reasonable degree of medical  
15 probability." *Morsicato v. Sav-On Drug Stores, Inc.*, 121 Nev. 153, 158, 111 P.3d 1112, 1116  
16 (2005). *See also Brown v. Capanna*, 105 Nev. 665, 671–72, 782 P.2d 1299, 1304 (1989)  
17 (testimony regarding causation must conform to the reasonable degree of medical probability  
18 standard). Nor has she offered any facts to contradict those set forth in the motion. Because Hill  
19 cannot prove her allegations, she cannot prevail on her claims. Therefore, Aria is entitled to  
20 summary judgment.  
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1           **IT IS HEREBY ORDERED** that Defendant Aria's motion for summary judgment  
2 against Plaintiff Aubrey Hill is GRANTED. The Clerk of Court is directed to enter judgment in  
3 favor of Aria and against Hill accordingly.

4           Dated: September 26, 2014.



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6           ANDREW P. GORDON  
7           UNITED STATES DISTRICT JUDGE